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of similarly situated individuals

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KIEVA MYERS, individually, and on behalf of a class of similarly situated individuals,

CASE NO. 3:16-cv-00412-WHO

Assigned for All Purposes to
the Honorable William H. Orrick

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC,

Defendants.

**FINAL APPROVAL ORDER AND
JUDGMENT AND AWARD OF
ATTORNEYS FEES, COSTS, AND
PROPOSED ENHANCEMENT
[PROPOSED]**

1 This matter comes before the Court on Plaintiff's Motion for Final Approval of the proposed
 2 settlement reached in this class action proceeding, and for an award of attorneys' fees, costs, and a class
 3 representative enhancement for the named Plaintiff. The Court's role in reviewing the proposed
 4 settlement is to determine whether, under all the circumstances, the settlement is fair, reasonable and
 5 adequate.

6 Defendant BMW of North America, LLC, has taken the steps required to notify the Settlement
 7 Class of the proposed settlement in accordance with the Court's Order of September 10, 2018. The Court
 8 finds that the notice given, including individual notice to current and former owners and lessees,
 9 constitutes reasonable and adequate notice to the Settlement Class and the best notice practicable under
 10 the circumstances.

11 The Court held a hearing on the proposed settlement on March 27, 2019, which was made known
 12 to members of the Settlement Class through the notice procedures employed by the parties. The Court
 13 provided at that hearing an opportunity for all interested parties to be heard. There were two objections to
 14 the settlement and 43 individuals opted out of the settlement in a timely fashion.

15 The Court has determined, on the basis of the foregoing, and all other relevant materials filed in
 16 this action and the record herein, that the proposed settlement is a fair, reasonable and adequate
 17 compromise of the claims and defenses asserted in this action, and should therefore be approved pursuant
 18 to Federal Rule of Civil Procedure 23(e), and that Plaintiff's application for an award of fees, costs, and
 19 an enhancement award to the named Plaintiff is reasonable and should be approved.

20 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

21 1. The Class Action Settlement Agreement and the settlement embodied therein, is
 22 approved as fair, reasonable, and adequate;

23 2. The certification of the Settlement Class as defined in this court's
 24 order of September 10, 2018 (Docket 67, ¶ 2) is hereby confirmed for purposes of the settlement of this
 25 Action;

26 3. The Court hereby approves the form and manner of disseminating the settlement
 27 Notice to the Class Members as set forth in the Agreement and finds that the Notice given was

1 accomplished as provided for by the Agreement and constitutes the best notice practicable under the
2 circumstances, and constitutes valid, due, and sufficient notice to Class Members in full compliance with
3 the requirements of applicable law, including the Due Process Clause of the United States Constitution;

4 4. The court finds that the Representative Class Plaintiff and Class
5 Counsel have fairly and adequately represented the interests of the Settlement Class members at all times
6 in the action;

7 5. Settlement Class members who have not timely requested exclusion from the Settlement
8 Class and any of their predecessors, successors, representatives, parent companies, subsidiaries, affiliates,
9 heirs, executors, administrators, attorneys, successors, and assignees are hereby enjoined and barred from
10 instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly,
11 as an individual or collectively, representatively, derivatively, or on behalf of them or in any other
12 capacity whatsoever, any action in any state or federal court or any other tribunal, forum, or proceeding of
13 any kind against the Released Parties that asserts any of the Released Claims as set forth in the
14 Agreement;

15 6. BMW is hereby discharged from all further liability for the Released Claims to Settlement
16 Class members;

17 7. Counsel for Plaintiff's application for an award of fees and costs of \$692,000 is fair and
18 reasonable and is hereby granted, subject to the fee division agreement of counsel;

19 8. The request for an enhancement award to the named Plaintiff of \$5,000 is fair and
20 reasonable and is hereby granted;

21 9. The court overrules as without merit the objections to the settlement by Ralph
22 Hobson Miller and Douglas Q. Kitt, for the reasons set forth in the response to the objections;

23 10. The Action is hereby dismissed with prejudice;

24 11. The Court reserves jurisdiction over this case for the limited purpose of administering
25 the settlement, enforcing the settlement, and related matters; and

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27 12. The Clerk shall promptly enter this Order as a Final Judgment in the docket of this
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1 action.

2 Dated: March____, 2019

3 The Hon. William H. Orrick
United States District Judge

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